

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

NANCY KEENAN

STATE OF MONTANA

* * * * *

PAMELA E. DOUGHERTY,

Appellant,

vs.

TRUSTEES, TETON COUNTY SCHOOL
DISTRICT NO. 30,

Respondents.

OSPI - 161-88

ORDER

* * * * *

STATEMENT OF THE CASE

This matter is an appeal from the decision of the Teton County Superintendent of Schools affirming the decision of the Board of Trustees of Teton County School District No. 30. The County Superintendent found that Appellant Dougherty is a non-tenured half-time librarian. The issue before this Superintendent is whether in Appellant Dougherty's current position with the district as half-time librarian, she is tenured or non-tenured.

Background

Dougherty was a tenured teacher employed by Respondents teaching home economics half-time and working half-time as the school's librarian. In March, 1988, the Respondent decided to eliminate the home economics program. The librarian position was not eliminated. A hearing, as required by statute, was held on the recommendation of the superintendent to eliminate the home economics program and the trustees voted to terminate Dougherty's

contract.

Dougherty was subsequently offered, and accepted, the continued half-time librarian position for **1988-89**, a position that she has held since the second semester of the **1982-83** school year.

Dougherty filed a timely appeal with the County Superintendent as provided in Section **20-4-204**, M.C.A., contending that she should have tenure in the half-time librarian position for **1988-89**. The parties waived a hearing, entered into a stipulation of facts and submitted briefs to the County Superintendent. On November **9, 1988**, the County Superintendent found as a conclusion of law that Dougherty is a non-tenured half-time librarian.

On December **9, 1988**, a Notice of Appeal was filed with this Superintendent.

DECISION AND ORDER

The State Superintendent of Public Instruction has jurisdiction of this appeal in accordance with Section **20-3-210**, M.C.A.

Having reviewed the complete record established at the county superintendent hearing, the findings of fact, conclusions of law and order of the county superintendent and read the appeal briefs of the parties, this Superintendent reverses the decision of the County Superintendent because the conclusions of law are affected by error of law. The facts, having been stipulated by the parties, are not in dispute.

1 Tenured teachers must be terminated pursuant to Section 20-4-
2 204, M.C.A. It is clear from the record that Respondent
3 eliminated only the home economics program and the attendant half-
4 time home economics position. The half-time librarian position
5 was undisturbed.

6 MEMORANDUM OPINION

7 This case is similar to Raymond Harris v. Trustees, Cascade
8 County School District No. 6 and F, OSPI 138-87 (7 Ed. Law 246
9 afm'd ADV 89-42, 1st Judicial Dist. 1989).

10 The sole issue before this Superintendent is whether Appellant
11 Dougherty after six consecutive years as a half-time librarian
12 continues to be tenured as a half-time librarian. The elimination
13 of her half-time home economics position is uncontroverted.

14 The record, however, reflects no basis for terminating her
15 tenured services as a half-time librarian. Her half-time tenure
16 in that position was established when the fourth consecutive
17 contract with the district was signed. Section 20-4-203, M.C.A..
18 Tenure applies to part-time positions. See State ex rel. Saxtorph
19 v. District Court, 128 Mont. 353, 275 P 2d 209 (1954). As has
20 been found in case after case, tenure of a teacher is clearly both
21 a valuable and a substantial right which cannot be taken away
22 except for good cause.

23 I would agree with Appellant's argument that to contend that
24 Appellant has lost tenure although now serving for the sixth
25 consecutive year as half-time librarian would be endorsing a
hypertechnical maneuver to circumvent the valuable rights of

tenure.

1 Judge Henry Loble in affirming the findings of this
2 Superintendent in Harris, supra., held that the board was mistaken
3 when it contended that the teacher had no right to the remaining
4 half-time position resulting from the reduction of a full-time
5 position to a half-time position.

6 Based on the record before this Superintendent, the decision
7 of the Teton County Superintendent is reversed.

8 DATED this 3 day of October, 1989.

9 Nancy Keenan
10 NANCY KEENAN

11 CERTIFICATE OF SERVICE

12 THIS IS TO CERTIFY that on the 4th day of October, 1989, a
13 true and exact copy of the foregoing ORDER was mailed, postage
14 prepaid to:

15 Emilie Loring
16 HILLEY & LORING
500 Daly Avenue
Missoula, MT 59801

17 Charles E. Erdmann
18 ERDMA " & WRIGHT
Box 5418
Helena, MT 59604

19 Wilma Jensen
20 County Superintendent of Schools
21 Teton County Courthouse
Choteau, MT 59422

22 Linda V. Brandon
23 Linda V. Brandon
24 Paralegal Assistant
25 Office of Public Instruction